

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

4 STRATFORD SQUARE MALL
HOLDINGS, LLC

Plaintiff,

-vs-

SFA HOLDINGS INC. f/k/a
SAKS INCORPORATED,

Defendant.

Case No 1:24-cv-03924

COMPLAINT

4 Stratford Square Mall Holdings, LLC (“Stratford” or “Plaintiff”), by undersigned counsel, files this Complaint against Defendant Saks Incorporated (“Saks”). In support of the Complaint, Stratford states as follows:

NATURE OF THE ACTION

1. Defendant Saks is the unconditional guarantor of the lease for an anchor tenant box at the Stratford Square Mall in Bloomingdale, Illinois formerly occupied by a Carson Pirie Scott department store. Carson Pirie Scott defaulted on the lease and vacated the premises. Despite multiple demands Saks has failed to honor its obligations under the Lease Guaranty (as defined herein).

2. The prior owner and lessor, WEC 98C-3 (“WEC”), pledged the property and all rights under the Lease Guaranty to Stratford as security for a mortgage loan. WEC defaulted on the loan and its entire interest in the collateral, including the Lease Guaranty, has been foreclosed and is now owned by Stratford.

3. Stratford previously obtained a judgment against Saks for amounts owed on the Lease through September 30, 2022, in case no. 1:20-cv-04356. This judgment was affirmed by the Court of Appeals in case no. 23-1489. The decision of the Court of Appeals is dispositive of all issues in this case other than the remaining amount due on the Lease and the Plaintiff intends to file an immediate motion for summary judgment.

PARTIES

4. Stratford is a single-member limited liability company organized under the laws of the State of Maryland.

5. Wells Fargo Bank, N.A., as Trustee for the Registered Holders of Deutsche Mortgage & Asset Receiving Corporation, COMM 2000-C1 Commercial Mortgage Pass-Through Certificates, a New York common law trust, is the sole member of Stratford. Wells Fargo, N.A. is a national banking association organized and existing under the laws of the United States of America. Wells Fargo's Articles of Association designate South Dakota as the location of its main office. Wells Fargo and Stratford are therefore citizens of South Dakota.

6. Saks, Inc. is a corporation organized under the laws of the State of Tennessee and is therefore a citizen of Tennessee.

JURISDICTION

7. The Court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1332(a) because the adverse parties are citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

FACTS

9. Stratford was formerly the owner of an anchor tenant box at the Stratford Square Mall in Bloomingdale, Illinois and all related rights to leases and rents (the “Premises”).

10. Stratford is the successor-in-interest to WEC 98C-3, LLC (“WEC”) pursuant to a Sherriff’s Deed recorded in the land records of DuPage County on March 18, 2020.

11. The Premises was formerly occupied by a Carson Pirie Scott (“CPS”) department store.¹

12. CPS was a division of Bon-Ton Stores, Inc. (“Bon-Ton”) and a subsidiary of the Defendant, Saks.

The Lease and the Lease Guaranty

13. CPS occupied the Premises pursuant to the terms of a lease dated October 31, 1985 (as modified, assigned and extended, the “Lease”). A copy of the Lease is attached as Exhibit 1.

14. The Lease was amended on August 1, 1993 the (“First Amendment”) and again on August 5, 1998 (the “Second Amendment”). The Frist and Second Amendments are attached as Exhibits 2 and 3.

15. Contemporaneous with the Second Amendment, Saks’ predecessor-in-interest, Proffitt’s Inc., entered into a Corporate Guaranty of the Lease (the “Lease Guaranty”) pursuant to which it unconditionally guaranteed the “full, faithful and prompt performance of all covenants, terms, conditions, and agreements” of the tenant under the Lease. A copy of the Lease Guaranty is attached as Exhibit 4.

16. On September 17, 1998 Saks Holdings, Inc and Proffitt’s, Inc. merged. The Defendant was the surviving entity and assumed liability for the Lease Guaranty.

¹ Title to the in-line interior retail spaces was held separately from the anchor tenant boxes.

17. In July 2017 Saks executed a “Guarantor Estoppel Certificate” reaffirming its obligations under the Lease Guaranty. A copy of the Estoppel is attached as Exhibit 5.

18. Bon-Ton filed bankruptcy on February 4, 2018.

19. CPS defaulted on the Lease by failing to make the February 2018 rent payment as and when due.

20. Stratford’s predecessor in interest, WEC, notified Defendant of CPS’s failure to pay rent by letter dated February 9, 2018. A copy of this letter is attached as Exhibit 6.

21. By letter dated March 9, 2018 WEC again notified Saks of the default and demanded that Saks honor the Lease Guaranty and make payment of all past due rent and additional rent. A copy of this letter is attached as Exhibit 7.

22. In March 2018 CPS briefly resumed paying rent, but thereafter rejected the Lease and ceased making payments in August 2018.

23. Despite these notices and demands Saks refused to honor its obligations under the Lease Guaranty.

The Mortgage and Foreclosure

25. Wells Fargo Bank, N.A., as Trustee for the registered holders of Deutsche Mortgage & Asset Receiving Corporation, Comm 2000-C1, Commercial Mortgage Pass-Through Certificates (the “Trust”), a New York common law trust, previously held a fully perfected first-priority Mortgage, Security Interest and Assignment of Leases and Rents (“Mortgage”) encumbering the Premises and all related rents.

26. The Mortgage specifically included among the pledged collateral “All right title and interest of the Borrower in and to...” the Lease and “that certain Corporate Guaranty of even date herewith...”. A copy of the Mortgage is attached as Exhibit 8.

27. The Trust commenced a foreclosure of the Mortgage in the Circuit Court for DuPage County, Illinois under case number 2018CH000577 by filing a complaint on May 3, 2018 (the “Foreclosure Action”).

28. The Circuit Court granted the Trust summary judgment by Order entered on July 18, 2019 (the “Foreclosure Order”). A copy of the Foreclosure Order is attached as Exhibit 9.

29. The Foreclosure Order is specifically directed to both the real property and “all personal property subject to the security interest held by the Wells Fargo Bank, N.A., as Trustee for the registered holders of Deutsche Mortgage & Asset Receiving Corporation, Comm 2000-C1, Commercial Mortgage Pass-Through Certificates described in the Mortgage...”. Exhibit 9 at ¶ 6.

30. On August 27, 2019, the Sheriff of DuPage County, Illinois held an auction of the mortgaged property at which the Trust was the successful bidder.

31. Thereafter, the Trust filed a Motion for Order Confirming Sale and Awarding Possession (“Motion to Confirm”) seeking an order confirming the sale and directing the Sherriff to issue title and possession to the Trust’s nominee, 4 Stratford Square Mall Holdings, LLC.

32. On February 28, the Sherriff issued a Judicial Sale Deed conveying title to all property encumbered by the Mortgage to Stratford. The Deed was recorded in the Office of the

Recorder for DuPage county on March 18, 2020 as document number R2020-027392. A copy of the Judicial Sale Deed is attached as Exhibit 10.

The First Action Against Saks

33. Stratford commenced an action against Saks on October 26, 2020, under case no. 1:20-cv-04356 and obtained a final judgment for amounts due under the Lease through September 30, 2022, on March 8, 2023 (the “Judgment”).

34. The Court of Appeals issued an opinion affirming the Judgment on April 24, 2024 (the “COA Opinion”). A copy of the COA Opinion is attached as Exhibit 11.

35. Concerning the remainder of the Lease term, October 1, 2022, through January 31, 2024, the COA Opinion states “If Saks continues to refuse to honor the guaranty, Stratford could bring a new claim. Or Saks could pay what it owes and avoid future litigation.”

36. Notwithstanding the COA Opinion, Saks has to date refused to honor the Judgment or its remaining obligations under the Lease.

37. The COA Opinion addresses the same parties and documents before the Court in this case and is dispositive of all questions of law and fact other than the remaining amount owed under the Lease.

Amount Due For Remaining Lease Term

38. From September 30, 2022, through the end of the Lease Term on January 31, 2024, an additional 16 months of Basic Rent accrued at the rate of \$91,530 per month, totaling \$1,464,480.

39. Accrued pre-judgment on the Basic Rent totaled \$126,310.48 as of May 1, 2024, and continues to accrue at the rate of 9% per annum, or \$361.10 per day.

40. In addition, Stratford is entitled to collect the costs of this action, including attorneys' fees, as Additional Rent under the Lease.

AS AND FOR A FIRST CLAIM FOR RELIEF
(Action on the Lease Guaranty)

41. Stratford repeats and realleges the foregoing paragraphs.

42. Saks duly executed and delivered the Lease Guaranty wherein and whereby it absolutely and unconditionally guaranteed payment of CPS's obligations under the Lease and performance of its obligations thereunder.

43. Defendant has failed to comply with the terms, covenants and conditions of the Lease Guaranty by failing to make payment as required, despite demand.

44. Stratford is the beneficial owner of all rights under the Lease and Lease Guaranty.

45. As a direct result of the foregoing, Defendant now owes Stratford \$1,446,480 in Basic Rent, plus pre-judgment as of May 1, 2024, in the amount of \$126,310.48 and accruing at the rate of \$361.10 for each day thereafter, together with reasonable attorneys' fees and the costs of this provision in accordance with the provisions of the Lease and the Lease Guaranty.

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WHEREFORE, Stratford respectfully demands judgment against Defendant awarding to Plaintiff:

- a. Unpaid Basic Rent from September 30, 2022, through January 31, 2024, in the amount of \$1,464,480;
- b. Pre-judgment interest in the amount of \$126,310.48 as of May 1, 2024 and \$361.10 for each day thereafter;
- c. Reasonable attorneys' fees in accordance with the Lease and Lease Guaranty;
- d. Such other and further relief as to the Court seems just, equitable, and fair, including the costs and expenses of this case.

Dated: May 14, 2024

Respectfully submitted,

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